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DANIEL N. ZENCHELSKY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

22 PROTEGO NETWORKS, INC., a Delaware
23 corporation,
24 Plaintiff,
25 v.
26 DANIEL N. ZENCHELSKY,
27 Defendant.

28 AND RELATED COUNTERCLAIM.

Case No. C05-00464 MJJ

**STIPULATION AND ~~PROPOSED~~
ORDER FOR THE PROTECTION OF
CONFIDENTIAL AND PROPRIETARY
INFORMATION AND MATERIAL**

GRANTED

Complaint Filed: February 1, 2005

Pursuant to Federal Rule of Civil Procedure 26 and this Court's Local Rules, in order to protect the confidentiality of, and the rights to, information and documents developed and disclosed in connection with this litigation, and to facilitate discovery by and among the parties to this action and from third parties, the parties to this Stipulation (the "Parties") hereby stipulate and request the Court to order that the following Order for the Protection of Confidential and Proprietary Information and Material ("Order") be issued in this action:

1. This Order shall be applicable to, and govern without limitation, all information, things or documents (or portions thereof) produced in response to discovery requests, subpoenas, answers to interrogatories, depositions, exhibits, motions, briefs, pre-trial orders, stipulations, responses to requests for admission and all other discovery taken, testimony adduced at trial, matters in evidence before this Court and other information that a party, or a non-party responding to a subpoena, reasonably and in good faith believes to contain trade secrets or other confidential, proprietary, technical or commercial information that any party or third party disclosing the information ("Designating Party") designates as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that thereafter is furnished, filed or served directly or indirectly, by or on behalf of that party or third party in connection with this proceeding. The treatment of all documents and other information so designated (collectively referred to as "Confidential Material") shall be governed by the terms of this Order.

2. "Confidential Material" shall be interpreted to encompass any confidential, proprietary or otherwise sensitive information as to which the Designating Party customarily takes steps to limit or prevent its disclosure or misuse, including trade secrets as defined under California Civil Code § 3426.1(d) and applicable case law; non-public patent applications; other confidential and proprietary technical, research, or development information; commercial, financial, budgeting and/or accounting information; information about existing and potential customers, marketing and branding studies, performance and projections, business strategies, decisions and/or negotiations, and/or pricing; and confidential and proprietary information about affiliates, parents, subsidiaries, and third parties with whom the parties to this action have had business relationships. The scope of this Order shall be understood to encompass not only those

items or things that are expressly designated as Confidential Material, but also any information derived therefrom and all copies, photographs, excerpts, and summaries thereof, as well as testimony and oral conversation derived therefrom or related thereto.

3. Designation of Confidential Material

a. A party or third party may designate as “CONFIDENTIAL” any non-public material that it supplies, discloses, produces, files or uses in connection with this proceeding and that it does not wish to be disclosed to the public.

b. A party or third party may designate as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” any non-public material that it supplies, discloses, produces or uses in connection with this proceeding when it has a good-faith belief that the disclosure of such material to the adverse party may have a material adverse effect on the Designating Party.

4. Confidential Material shall be designated and marked as follows:

a. *Documents:* Documents (including but not limited to discovery responses and court filings), and any information contained therein, may be designated as Confidential Material by placing the following legend, or equivalent thereof, on any such document prior to production, service or filing: “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such legend shall be placed upon the first page of each document containing Confidential Material and upon each page within such document considered to contain Confidential Material.

b. *Magnetic, Optical Media and Other Electronic Documents:* Where a document is produced in a magnetic, optical media or other electronic form (such as floppy diskette, tape, CD-ROM, DVD or flash memory), the cartridge, reel, CD-ROM, DVD or medium container shall be marked with the appropriate confidentiality notice as described in Paragraph 3 above. To the extent that any information contained on such media is printed, such printouts will be marked as described in Paragraph 4.a. above.

c. *Physical Exhibits:* The confidential status of a physical exhibit shall be indicated by stamping or placing a label on said physical exhibit designating it either a

1 “CONFIDENTIAL MATERIAL OF [Designating Party(s)]” or “HIGHLY CONFIDENTIAL
2 MATERIAL OF [Designating Party(s)], ATTORNEYS’ EYES ONLY.”

3 d. *Partial Designations:* In the case of information incorporated in answers
4 to interrogatories or responses to requests for admission, the appropriate legend shall be placed
5 on the answer or response and such answers or responses shall be separately produced.

6 e. *Deposition Proceedings:* Designation of specific portions of deposition
7 transcripts (including specific exhibits) as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” shall be made by a statement to such effect on the record in the
9 course of the deposition or by subsequent written notification to all parties within twenty
10 (20) days of the conclusion of the deposition. Upon designation of the transcript on the record,
11 during the deposition, the portion of the deposition containing Confidential Material shall
12 continue in the absence of all persons to whom access to said Confidential Material has been
13 denied under the terms of this Order. The Court Reporter or other person recording the
14 proceedings shall segregate any portion of the transcript of the deposition or hearing which has
15 been stated to contain confidential information and may furnish copies of these segregated
16 portions, in a sealed envelope, only to the deponent as required by law, to the Court, and to
17 counsel for the parties bound by the terms of this Order. In the event that no portion of the
18 deposition is designated Confidential at the deposition, the transcripts shall nevertheless be
19 treated, temporarily, as “HIGHLY CONFIDENTIAL MATERIAL OF [Designating Party(s)],
20 ATTORNEYS’ EYES ONLY” until the 20-day period after the conclusion of the deposition has
21 elapsed, or there is a designation within that period. In the case of testimony designated
22 Confidential following conclusion of the deposition, all parties shall mark the appropriate legend
23 on their copy(ies) of the deposition transcript and treat the information as confidential from the
24 date they are notified of such designation, if the reporter does not do so.

25 5. Confidential Material may be disclosed only as follows:

26 a. Materials designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY” may be disclosed only to the following persons:
28

1 i. In-house Counsel for Plaintiff and Counterclaim Defendants
2 (designated in Exhibit B to this Order) and outside counsel of record to any party to this
3 litigation, and all legal assistants, stenographic and clerical employees working under the
4 supervision of such counsel;

5 ii. The parties' independent expert(s) or consultant(s), but only to the
6 extent that the procedure set forth in Paragraph 5.c., below, is followed;

7 iii. Any person of whom testimony is taken, where such person was the
8 author or specified recipient of the designated material or is the present employee or expert
9 witness for the Designating Party, or where counsel for the Designating Party has, either before or
10 during the deposition, approved the disclosure of such materials to that person, except that such
11 person may not retain any such materials except as may be necessary as an exhibit to a
12 deposition; and

13 iv. The Court in this proceeding, or in any proceeding between one or
14 more of the Parties to this action relating to, or deriving from the '763 patent application, its
15 subject matter or the copyrighted materials attached to Zenchelsky's Second Amended
16 Counterclaim, under seal in accordance with Local Rule 79-5 and Paragraph 12 herein.

17 b. Materials designated "CONFIDENTIAL" may be revealed to the persons
18 designated in Paragraph 5.a., above, as well as to:

19 i. Any named party to the litigation, including any present officer,
20 director, or employee thereof, including in-house counsel, to whom it is necessary that the
21 designated material be shown for purposes of the litigation, and as to whom the Designating Party
22 has given its prior consent through the procedures herein that the designated material may be so
23 disclosed, which consent will not be unreasonably withheld; and

24 ii. Any other person as to whom the parties first agree in writing,
25 which agreement will not be unreasonably withheld.

26 c. Prior to the disclosure of any "CONFIDENTIAL" material to an
27 independent expert or consultant, the disclosing party must follow the following procedure: (i)
28 The expert must agree to be bound by the terms of this Protective Order and sign an

Acknowledgement of and Agreement To Be Bound by Order for the Protection of Confidential and Proprietary Information and Material in the form attached as Exhibit A (“ACKNOWLEDGEMENT”); (ii) the party seeking to disclose the Confidential Material must give notice of the identity (including name, address, current resume, and professional affiliation) of such expert or consultant to the Designating Party. In any event, material designated “CONFIDENTIAL” shall be disclosed to an expert or consultant only to the extent necessary for the expert or consultant to perform his or her work in connection with the litigation.

d. Prior to the disclosure of any “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material to an independent expert or consultant, the disclosing party must follow the following procedure: (i) The expert must agree to be bound by the terms of this Protective Order and sign an ACKNOWLEDGMENT; (ii) the party seeking to disclose the Confidential Material must give notice of the identity (including name, address, current resume, and professional affiliation) of such expert or consultant to the Designating Party at least five (5) business days in advance of the proposed disclosure; (iii) the Designating Party shall have five (5) business days to object in writing to such disclosure; and (iv) if the Designating Party objects in writing to such disclosure, no disclosure shall be made in the absence of a court order or agreement of the parties. In any event, material designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall be disclosed to an expert or consultant only to the extent necessary for the expert or consultant to perform his or her work in connection with the litigation.

6. Where the consent of a party is required for disclosure under this Order, and that consent has been refused, the party refusing to consent will ensure that it has made a good faith attempt to reach an agreement, including redacting or otherwise limiting the disclosure wherever possible.

7. All persons who receive Confidential Material, except for personnel of the Court and counsel of record for the parties, shall be provided with a copy of this Order and shall first acknowledge in writing that they have reviewed the terms of this Order and agree to abide by the terms of this Order by executing an ACKNOWLEDGMENT. Such signed ACKNOWLEDGMENTS shall be retained by counsel for the parties hereto and shall be

1 available for inspection by the Court upon request. Similar ACKNOWLEDGMENTS shall be
 2 obtained and maintained with respect to “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL –
 3 ATTORNEYS’ EYES ONLY” materials provided by third parties.

4 8. All persons who receive Confidential Material shall not use or disclose to any
 5 person, at any time, such materials, or information contained therein, except in conformance with
 6 this Order.

7 9. All persons who receive Confidential Material agree to be subject to the
 8 jurisdiction of this Court for purposes of any proceedings relating to the performance under,
 9 compliance with, or violation of this Protective Order. (*)

10 10. All persons who receive Confidential Material shall maintain such information and
 11 materials in a secure and safe area and shall exercise due and proper care with respect to the
 12 storage, custody, use and/or dissemination of such information.

13 11. All persons who receive Confidential Material shall not copy, reproduce, or
 14 otherwise duplicate any such information and materials, except as provided herein, and as may be
 15 necessary for the work the recipient does in conjunction with this lawsuit.

16 12. Confidential Material shall not be made available to any person except as
 17 authorized under this Order. Confidential Material shall not be used for any purposes other than
 18 in the prosecution or defense of claims asserted in this action, or in any proceeding between one
 19 or more of the Parties to this action relating to, or deriving from the ‘763 patent application, its
 20 subject matter or the copyrighted materials attached to Zenchelsky’s Second Amended
 21 Counterclaim. In no event shall any person receiving Confidential Material use it for commercial
 22 or competitive purposes or make any public disclosure of the contents thereof. However, nothing
 23 contained in this Order shall affect the right of the Designating Party to disclose information
 24 designated solely by it under this Order.

25 13. Objections to the designation of Confidential Material will occur only as follows:

26 a. If a party believes that material designated “CONFIDENTIAL” or
 27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is not the proper subject for such
 28 designation, or should be reclassified or revealed to an individual not otherwise authorized to

1 have access to such material under the terms of this Order, then the objecting party shall object in
2 writing to the Designating Party. The parties shall first try to resolve the dispute in good faith on
3 an informal basis.

4 b. If the parties are unable to resolve their dispute, then the party challenging
5 the designation may request appropriate relief from the Court. It shall be the burden of the
6 Designating Party to establish that the contested material is to be treated according to its
7 designation under this Order. Unless and until a Court ruling is obtained changing a designation,
8 or the parties agree otherwise in writing, the material involved shall be treated according to its
9 designation.

10 14. Submission of Confidential Material to the Court shall only be as follows:

11 a. A party who lodges or files any paper, pleading or exhibit containing,
12 discussing, describing or constituting Confidential Material, or any documents or papers filed in
13 opposition or reply to any sealed motion or document that discusses, describes or quotes any
14 portion of the contents of such Confidential Material, shall submit such material to the Court in
15 compliance with Local Rule 79-5. The parties understand that pursuant to Local Rule 79-5, they
16 may not attempt to seal entire pleadings or memoranda required to be filed pursuant to the
17 Federal Rules of Civil Procedure or these Local Rules. The parties agree, however, that the
18 actual underlying documents, specific portions of the deposition transcripts, or other exhibits
19 submitted in support of their pleadings or memoranda, to the extent that such materials have been
20 designated Confidential Material, shall be filed under seal pursuant to the terms of this Protective
21 Order. The parties further agree, to the extent that their pleadings or memoranda quote from,
22 describe or make specific reference to Confidential Material so as to reveal the contents of such
23 Confidential Material, that they will clearly designate their pleadings as containing such
24 Confidential Material and will submit both a "public" and a "private" version of such pleading or
25 memoranda to the Court. The public version will have had redacted from it the quotes or other
26 specific references to such Confidential Material and will be clearly designated "REDACTED
27 NON-CONFIDENTIAL VERSION." The private version shall be complete and unredacted and
28 shall be submitted to the Court under seal pursuant to an application and proposed Order that

1 authorizes the sealing of those specific pages or portions thereof of the particular pleading or
2 memoranda which contain the information requiring confidentiality. All other portions of such
3 pleadings or memoranda shall be included in the public file.

4 b. Such Confidential Material shall be lodged in sealed envelopes or other
5 appropriate sealed containers on which shall be the information required by Local Rule 79-5(c),
6 including the title of this action, an indication of the nature of the contents of the sealed envelope
7 or container, the words "CONFIDENTIAL MATERIAL" and the following statement: **"This**
8 **envelope is sealed pursuant to order of the Court, contains Confidential Information and is**
9 **not to be opened or the contents revealed except by order of the Court."** A copy of this order
10 shall be submitted with the lodged materials. The clerk shall then file the information under seal
11 in accordance with Local Rule 79-5(b). Any papers containing confidential information shall be
12 returned to the submitting party upon dismissal or final judgment in this action and the
13 exhaustion of all appeals. To the extent that such information is referenced or described in a
14 hearing in this Court, the Court shall, in its discretion, conduct the hearing *in camera*, and said
15 transcripts and proceeding shall be sealed (and kept under seal until further order of the Court).
16 All documents, exhibits or papers filed in connection with any proceedings related to compliance
17 with, performance under, construction of, or violation of this Protective Order, shall be filed
18 under seal.

19 c. Nothing herein shall prevent the use of Confidential Material at trial, nor
20 shall it prevent any party from objecting to such use. However, if a party receiving Confidential
21 Material wishes to call it to the attention of this Court, or to direct the attention of this Court to
22 the source thereof, whether on motion or at trial, counsel for the party shall take all necessary
23 precautions to submit the Confidential Material or source to the Court under seal and *in camera*,
24 and will not publicize the Confidential material by inclusion in the public record. It shall be the
25 obligation of counsel for the party wishing to so use Confidential Material to employ the most
26 reasonably secure procedures to avoid publication thereof through its inclusion in the public
27 record.

1 15. Adherence to this Order in no way constitutes an admission by any party that any
2 information provided in this litigation and not subject to this Order is not proprietary or
3 confidential.

4 16. This Order shall not abrogate or diminish any contractual, statutory or other legal
5 obligation or right of any party or person, nor obligate any party or person to provide any
6 discovery to which it asserts objections.

7 17. None of the restrictions set forth in this Order shall apply to any information that
8 is acquired in good faith from a third party who is not a party or an employee or former employee
9 of a party to this action and who voluntarily supplies the information, or information that was, is,
10 or becomes public knowledge by means not in violation of the provisions of this Order, and not
11 involving wrongful disclosure by a third party or a party to this action.

12 18. Within ninety (90) days after termination of this litigation and the expiration of
13 time for all appeals, all originals and copies of Confidential Material shall be returned to counsel
14 for the respective persons or entities that produced such material, except that counsel for each
15 party may, if it wishes to do so, maintain a single set of all pleadings for its own purposes for a
16 reasonable period of time. Also within ninety (90) days after termination of this litigation and the
17 expiration of time for all appeals, counsel for each party hereto will exchange lists of all persons
18 who signed ACKNOWLEDGMENTS at their request. All extracts from Confidential Material,
19 summaries and compilations thereof, and all written, graphic, and recorded versions of
20 information therein, shall be destroyed by each recipient of the material, and a certificate of their
21 destruction shall be provided to the Designating Party. The termination of proceedings in this
22 action shall *not* thereafter relieve the parties from the obligation to maintain the confidentiality of
23 all Confidential Material received pursuant to this Order.

24 19. Nothing in the foregoing provisions of this Order shall be deemed to preclude any
25 party from seeking and obtaining, on an appropriate showing, such additional protection with
26 respect to the confidentiality of these proceedings or specific documents or testimony as that
27 party may deem appropriate, including but not limited to restrictions on public disclosure or
28 disclosure to competitors.

20. The terms of this Order shall apply to confidential documents or material produced or disclosed by third parties in connection with this action if such third party wishes to designate the document or information Confidential Material.

21. Each party reserves the right to apply to the Court to modify the terms of this Order in the event that the party believes that it is necessary. In the event that such an application is made, all persons described herein shall be bound by this Order until it is modified by the Court.

22. The inadvertent production of any document or other disclosure of Confidential Material that the Designating Party contends is subject to the attorney-client privilege, work-product protection, or any other privilege or protection against disclosure shall not necessarily be deemed a waiver in whole or in part of the claim of privilege or protection, either as to the specific document or the information disclosed or as to any other document or information relating thereto. Within a reasonable time after the discovery of the inadvertent production, or within thirty (30) days of receipt of a transcript in the case of a deposition, the producing party shall give notice to the receiving party that privileged documents or information have been inadvertently produced or disclosed and request the return of such documents. Any document or portion of transcript, including all copies thereof, constituting or containing information as to which notice of inadvertent production is given shall be returned to the producing party within fifteen (15) days of such demand, unless the receiving party objects to the claim of privilege, the claim of inadvertent production and/or the reasonableness of the notice given, in which case the receiving party and the producing party shall attempt to resolve the dispute. If the dispute is not resolved, the producing party may move the Court for a protective order. In the event that the producing party makes such a motion, the producing party shall have the burden to demonstrate the applicability of the privilege claimed, that the production was inadvertent, that the notice given was reasonable and that otherwise no waiver occurred. From the time of the producing party's notification of inadvertent production, any documents or information as to which notice is given shall be deemed and treated as privileged and shall not be used for any purpose until the

1 Court enters an order ruling otherwise, or until the receiving party and the producing party
2 otherwise agree.

3 23. If any party or non-party receives a subpoena or other compulsory process from
4 any other person or entity seeking the production of the "CONFIDENTIAL" or "HIGHLY
5 CONFIDENTIAL – ATTORNEYS' EYES ONLY" material produced under this Order, counsel
6 for the Designating Party shall be notified immediately in writing of the receipt of such subpoena
7 or other compulsory process and shall be given copies of such subpoena or compulsory process.
8 Absent the consent of the Designating Party, the party or person receiving the subpoena or
9 compulsory process shall refrain from producing the subpoenaed Confidential Material for a
10 period of thirty (30) days, in order to give the designating party the opportunity to take the
11 necessary steps to prevent disclosure in the proceeding from which the process issued.

12 The Undersigned counsel for the Parties agree to be bound by the terms and conditions of
13 this Protective Order.

14 **IT IS SO STIPULATED.**

15 Dated: January 19, 2006

FENWICK & WEST LLP

16 By: Rachael Samberg
17 Rachael G. Samberg

18 Attorneys for Plaintiff and Counterclaim Defendant
19 PROTEGO NETWORKS, INC., now Protego
20 Networks LLC, and Counterclaim Defendants
21 PARTHA BHATTACHARYA, IMIN LEE & YU
22 LIAO

23 Dated: January 23, 2006

24 LINER YANKELEVITZ SUNSHINE &
25 REGENSTREIF LLP

26 By: Kim Zeldin
27 Kim Zeldin JSC

28 Attorneys for Defendant and Counterclaimant
DANIEL N. ZENCHELSKY

Pursuant to General Order 45(x)

I hereby attest that I have on file all holograph signatures for any signatures indicated by a
“conformed” signature (/s/) within this e-filed document.

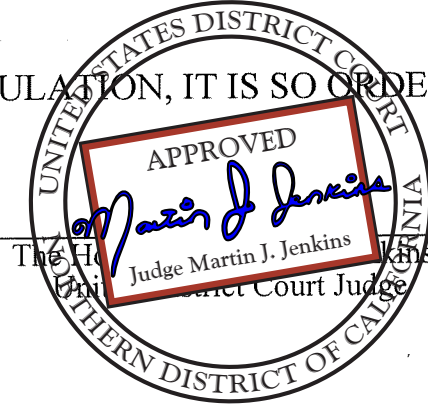
Dated: _____, 2006

Rachael G. Samberg

[PROPOSED] ORDER

PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED.

Dated: January 30 _____, 2006



FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW